

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Application for a Route Permit for the Fargo to St. Cloud 345 kV Transmission Line Project	ORDER GRANTING INTERVENTION TO NOCAPX2020, UNITED CITIZENS ACTION GROUP and NORTH ROUTE CITIZENS ALLIANCE
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On September 4, 2010, NoCapX2020, United Citizens Action Network (U-CAN), and North Route Citizens Alliance (NoRCA) filed a Petition to Intervene in this proceeding pursuant to Minn. R. 1400.6200. The Petition to Intervene was deficient, and on September 24, 2010, an Amended Petition for Intervention (Amended Petition) was filed.

In support of the Amended Petition, NoCapX2020 asserts that it is an organization of affected landowners that has been involved in each aspect of the CapX 2020 Certificate of Need docket and two of the previously filed CapX 2020 route permit proceedings, the Brookings-Hampton and the Hampton-LaCrosse(Alma) route permit proceedings. Its purpose here is to build a record “regarding the routing of the line and locations of substations in the areas not addressed by the more local concerns” raised by NoRCA, and to preserve its rights to appeal. NoCapX2020 is particularly interested in assuring that information about electromagnetic fields is taken into account in the routing choices.

NoCapX2020 also states that it will attempt to reconcile the capacity of the Fargo to St. Cloud transmission line with the low amperage levels in the Application and the EMF estimates in the Draft Environmental Impact Statement. Evidence concerning the electromagnetic fields’ relationship to property value, and socio-economic and health effects may be relevant. NoCapX2020 would also like to assure that information from the Draft Environmental Impact Statement is available to the landowners so that they are able to effectively participate in this proceeding.

U-CAN is a group of landowners who state that they will be directly affected by CapX 2020 transmission lines, and that they participated in the CapX 2020 Certificate of Need docket and the Brookings-Hampton route permit proceedings. U-CAN’s concerns are that landowners get timely notice and sufficient information to effectively participate in this proceeding. U-CAN is concerned about unnecessarily wide route corridors, and would like to advocate for permit conditions.

NoRCA is a group of landowners who are concerned about proliferation of transmission lines in their community, and advocate for the use of existing utility

corridors for the route. NoRCA is also concerned about the impact of route selection on natural resources within the Project Area.

Each of the three groups asserts that its interests are not fully addressed by another party to the proceeding.

The current party to this proceeding, the Applicants (Northern States Power Company and Great River Energy), has not filed an objection to the petition within seven days of service of the petition.

Based on the record in this proceeding, and as set forth in the attached Memorandum, incorporated herein;

ORDER

IT IS HEREBY ORDERED:

1. The Amended Petition to Intervene filed by NoCAPX2020, U-CAN and NoRCA is GRANTED.
2. The Petitioners shall be subject to the provisions of the Prehearing Order issued on May 25, 2010, as corrected to reflect that the deadline to submit public comments in this proceeding is **January 5, 2011**.¹
3. Their representative shall be added to the OAH Service List.

Dated: October 6, 2010

s/Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
Administrative Law Judge

MEMORANDUM

The Petitioners' Amended Petition has been granted. However, several statements were made in it that are either factually or legally incorrect. It is important to address a few of them to assure there is no misunderstanding about the standards for participation in a routing proceeding.

Any "person" desiring to intervene as a party may petition. A "person" is defined as:

¹ Transcript of Prehearing Conference, September 15, 2010, at 9.

an individual, partnership, joint venture, private or public corporation, association or society, firm, public service company, cooperative, political subdivision, municipal corporation, governmental unit or agency, public utility district, or any other entity, public or private, however organized.²

The Petitioners object to what they perceive to be a requirement placed upon them by the administrative law judge to demonstrate that their organizations are incorporated and they assert that any requirement that their organizations incorporate is not justified by the rules governing this proceeding.

The Petitioners have completely missed the point raised by the administrative law judge, which was that the organizations must provide some information about their status so that it is clear that there is an entity and that it is authorized to speak for its members. Their counsel was directed to show that there was some entity or organization, if she purported to represent that entity or organization rather than individuals, and that the entity or organization had agreed to act collectively in this proceeding. This was a low threshold and simple requirement to assure that there was the authority to speak on behalf of and take a position binding upon the group's members.

The transcript of the prehearing conference reflects this. It states:

[I] don't see that the United Citizens Action Network nor (sic) the North Route Citizen's Alliance are registered organizations with the Secretary of State's Office. So before I can fully review this, I need some evidence of their existence and of their bylaws, which would then authorize their participation in this proceeding. [I]f it's not an organization, then it's a collection of individuals. And if the individuals choose to intervene, I'll be happy to have petitions from them. But if it's an organization, there has to be someone who's authorized to speak for them as a group.³

The rule allowing intervention states:

The petition shall show how the petitioner's legal rights, duties, or privileges may be determined or affected by the proceedings, how those rights, duties, and privileges are not otherwise represented, and shall set forth the grounds and purposes for which intervention is sought and shall indicate petitioner's statutory or legal right to intervene, if one should exist.⁴

It is not possible to determine how an organization's rights, duties or privileges are affected without knowing how, as an organization, it will be affected by the proceeding. If the organization is an association of individuals who have banded together and has no other purpose other than to share resources, that is acceptable, so

² Minn. R. 1405.0200, subp. 4.

³ Transcript of Prehearing Conference, September 15, 2010, at 6.

⁴ Minn. R. 1405.0900, subp. 1.

long as the individuals have designated who will speak on their behalf and have agreed to be bound by that person's representations. It is acceptable to provide some documentation that there is actually a group, that it has a shared interest, and that it has authorized joint action in this proceeding. This may be as simple as a resolution signed by the members, indicating their intention to speak as one through a designated person.

The initial Petition stated only that U-CAN and NoRCA were organizations of affected landowners and residents within and in the immediate vicinity of the Fargo to St. Cloud Transmission Project and that they would be directly affected. It provided no information about their structure or the nature of the authority granted to speak for the members. With their Amended Petition, the Petitioners have provided copies of resolutions that expressly state their intent to act in concert and that specify who can act on their behalf. That is all that is required.⁵

B.J.H.

⁵ Ex. F and Ex. G to the Petition.